IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7588 OF 2005

Ram Hari Katekar & anr. Applicant

versus

The State of Maharashtra Respondent

Mr.S.R.Chitnis, Sr.Adv. with Mrs.V.R.Raje for applicant.

S.S.Tatkare, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 30th November 2005

PC :

1. After hearing Shri Chitnis - learned senior advocate appearing for the applicants and perusing the application as well as annexures thereto, in my view, there is much substance in the grievance that the Trial Court has rejected the application for bail preferred by these applicants by making some general observations and remarks about the crime.

2. The Trial Court should have appreciated that not only this Court but the Hon’ble Supreme Court has time and again set out factors which are

necessary to be gone into for the purpose of rendering any decision on an application for bail. If any reference is necessary it would suffice to quote the followig from a decision of the Supreme Court reported in 2005(8)-SCC-21 viz:

> ... ... The matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

3. The Sessions Court ought to have been aware that power to enlarge an applicant on bail is discretionary. However, the discretion has to be exercised judiciously. The Supreme Court has indicated that the discretion entails balancing of right of an individual and interest of society in general. Reasons, cogent and satisfactory, have to be indicated as to why the application is

either being granted or rejected. They may not be very elaborate and detailed. However, a cryptic order does not answer this requirement. The learned Judge has lost sight of these aspects and factors and has proceeded to reject the application for bail of both accused. A serious grievance is made by the learned Senior Counsel that neither the FIR is perused nor the nature of charge and the role of the applicant therein considered. In these circumstances, the applications preferred by the applicants herein before the Sessions Court being Application Nos.720/2005 and 713/2005 are restored to the file of Sessions Court for being decided afresh on merits and in accordance with law without in any manner being influenced by earlier order. Needless to state that the Trial Court shall also not be influenced by the order of this Court setting aside it’s order as the same is set aside in the light of the law laid down by Supreme Court while dealing with bail applications. The Trial Court shall endeavour to dispose of these applications as expeditiously as possible and in any event before 21st December 2005. Application disposed of.

(S.C.DHARMADHIKARI, J.)